SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 721

CAPITOL WINE & SPIRIT CORPORATION,
Petitioner,

vs.

STEWART BERKSHIRE, as Deputy Commissioner of the Bureau of Internal Revenue, in Charge of the Alcohol Tax Unit, HENRY MORGENTHAU, JR., as Secretary of the Treasury, and B. R. RHEES, as District Supervisor of the Alcohol Tax Unit, Bureau of Internal Revenue, Second District of New York.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The opinion of the United States Court of Appeals for the Second Circuit is reported officially in 150 F(2d) at 619, and is printed in the record (R. 346).

II. Jurisdiction

The jurisdiction of this Court is invoked under Title 28, U. S. C., Sec. 347(a) (Judicial Code Sec. 240(a) amended) and under Section 4(h) of the Federal Alcohol

Administration Act (49 Stat. 977, 27 U. S. C., Sec. 204(h)).

The judgment and decree to be reviewed was filed in the office of the Clerk of the Circuit Court of Appeals for the Second Circuit on October 8, 1945 (R. 359). The foregoing petition is timely within the requirements of Title 28, U. S. C., Sec. 350 (Judicial Code, Sec. 343).

III. Summary Statement of the Case

A summary statement of the matter involved has been made in the foregoing petition for writ of certiorari and, in the interest of brevity, is hereby adopted and made a part of this brief as a statement of the case.

IV. Specification of Errors to Be Urged

The United States Circuit Court of Appeals has erred in the following respects:

1. In failing to hold that the petitioner was denied the hearing to which it was entitled by Section 204(e) of the Federal Alcohol Administration Act.

2. In holding that the petitioner was not entitled to a Wholesaler's Basic Permit as a matter of right.

3. In holding that the orders of respondents annulling the Wholesaler's Basic Permit of petitioner should be affirmed.

V. Summary of Argument

Point I. Petitioner was Denied the Hearing to which it was Entitled under Sec. 204(e) of the Federal Alcohol Administration Act.

The statute guarantees to petitioner a fair hearing. Such a hearing requires a quasi-judicial procedure. The procedure provided by the Secretary failed to provide such a hearing in that the function of adjudicating as to the basic and essential finding of fraud, concealment, or mis-

representation of material fact was delegated to the District Supervisor, in whom was also joined the function of prosecutor, and the provision for administrative review of his findings limited the Deputy Commissioner to the consideration as to whether there was substantial evidence to support the finding of the District Supervisor. Such a hearing procedure is fundamentally unfair.

Point II. Petitioner was Entitled to a Wholesaler's Basic Permit as a Matter of Right.

Since petitioner held an Importer's Basic Permit in May, 1935, petitioner was entitled to a Wholesaler's Basic Permit as a matter of right under the plain and unambiguous provisions of the Act. The administrative interpretation of the statute denying to petitioner such permit as a matter of right improperly engrafted a limitation upon the plain meaning of the statute.

ARGUMENT

I

Petitioner was denied the hearing to which it was entitled under Section 204(e) of the Federal Alcohol Administration Act.

The granting of a fair hearing is a prerequisite to the making of a valid order of annulment. The statute (Section 204(e)) provides that a basic permit "shall by order of the Secretary of the Treasury, after due notice and opportunity for hearing to the permittee * * * be annulled if the Secretary finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact". Under this Section the finding of the Secretary as to the existence of fraud, misrepresentation or concealment of material fact in the procurement of the permit is basic and essential to the exercise of the authority of the Secretary to annul.

All questions touching the regularity and validity of the proceeding before the Secretary are open to review. *Morgan* v. *United States,* 298 U. S. 468, 477, 80 L. Ed. 1288, 1293, 56 S. Ct. 906; *United States* v. *Abilene & S. R. Co.,* 265 U. S. 274, 286-290, 68 L. Ed. 1016, 1021-1023, 44 S. Ct. 565; *Florida* v. *United States,* 282 U.S.194, 212-215, 75 L.Ed.291, 302-304, 51 S. Ct. 119. If the "opportunity for hearing to the permittee" required by the statute was not given, petitioner is entitled to have the orders annulling its permit set aside. Nor is it necessary to go beyond the terms of the statute in order to consider the constitutional requirement of due process as to notice and hearing. For the statute itself demands a hearing and the orders are void if a hearing was denied. *Morgan* v. *United States,* 298 U. S. 468, 80 L.Ed.1288,56 S.Ct.906 *supra; Interstate Commerce Commission* v. *Louisville & N. R. Co.,* 227 U. S. 88, 91, 57 L. Ed. 431, 433, 33 S. Ct. 185; *United States* v. *Abilene & S. R. Co.,* 265 U. S. 274, 68 L. Ed. 1016, 44 S. Ct. 565, *supra; Florida* v. *United States,* 282 U. S. 194, 75 L.Ed.291,51 S.Ct. 119, *supra; United States* v. *Baltimore & O. R. Co.,* 293 U. S. 454, 464 79 L. Ed. 587, 594, 55 S. Ct. 268. The term "hearing" calls for a fair hearing as a minimal requirement. *Railroad Commission of California* v. *Pacific Gas & Electric Co.,* 302 U. S. 388, 82 L. Ed. 319, 58 S. Ct. 334; *Palko* v. *State of Connecticut,* 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149. The statutory requirement relates to substance and not form and see *Ashbacker Radio Corp.* v. *Federal Communications Commission,* U. S. Supreme Court, 1945 Term, No. 65, decided December 3, 1945, reported in 90 L. Ed. 119, 66 Sup. Ct. 148.

The annulment of a basic permit is not a function of ordinary administration, conformable to the standards governing duties of a purely executive character. The exercise of the power of annulment involves an action affecting rights

or property, in this case a business which had been conducted for nine years, employed 350 persons, and had an annual volume of $15,000,000. It was a matter not committed by law to absolute executive discretion. On the contrary, the Secretary, as the Agent of Congress in annulling a permit, must act in accordance with the standards and under the limitations which Congress has prescribed. Congress has required the Secretary to determine, as a condition of his action, that the permit sought to be annulled "was procured through fraud, or misrepresentation, or concealment of material fact". If and when he so finds, only then may he annul the permit.

The duty of the Secretary in respect of such determination is of a quasi-judicial character and must be performed in the tradition and with the safeguards of judicial proceedings.

> "A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding. Hence it is frequently described as a proceeding of a quasi judicial character. The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The 'hearing' is the hearing of evidence and argument. If the one who determines the facts has not considered evidence or argument, it is manifest that the hearing has not been given." Hughes, C. J., in *Morgan* v. *United States*, 298 U. S. 468, 480-481, 80 L. Ed. 1288, 1295, 56 S. Ct. 906.

Petitioner contends that the procedure prescribed and followed in annulment cases by the Alcohol Tax Unit, by uniting the prosecuting and adjudicating functions in the Deputy Supervisor, without provision for full review of his findings in the light of the weight of the evidence, just as a trial judge may set aside a jury's verdict on that ground, deprived the administrative procedure of a fundamental requirement of quasi-judicial proceedings.

Petitioner does not question the authority of the Secretary to delegate to subordinates the power to hear, determine and annul. It is recognized that administrative convenience requires such delegation. Petitioner concedes that the delegation by the Secretary of these functions to the Deputy Commissioner in Charge of the Alcohol Tax Unit was proper. Petitioner concedes that the further delegation of the powers and functions to the Deputy Supervisor, to be exercised subject to the supervision and control of the Deputy Commissioner, would also be proper were it not for the fact that the Deputy Commissioner was precluded from making a full review of the findings and recommendations of the District Supervisor, including weighing the evidence, deciding as to the credibility of witnesses, and drawing justifiable inferences from the evidence, all of which are functions inherent in the adjudicating process.

The administrative procedure prescribed in annulment cases and followed by respondents in annulling petitioner's permit in effect united the prosecuting function and the adjudicating function in the District Supervisor and constituted him the ultimate trier of the facts. Where the same men are obligated to serve both as prosecutors and as judges, judicial fairness is undermined, and public confidence in that fairness is weakened. Administrative decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the administrator, in the role of prosecutor, pre-

sented to himself. "Administrative Procedure": Hearings Before a Subcommittee of the Senate Judiciary Committee on S. 674, S. 675 and S. 918, 77th Cong., 1st Sess. (1941) 1309.

The unfairness of such a procedure would be lessened if full court review of the findings were available, but the Act by its terms provides (Section 204(h)) that "the finding of the Secretary as to the facts if supported by substantial evidence, shall be conclusive".

This provision, as was held by the court below, renders the administrative findings of fact immune from judicial reversal if there was enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict (R. 349). Under this rule if what is called substantial evidence is found anywhere in the record to support conclusions of fact, the courts are said to be obliged to sustain the decision without reference to how heavily the countervailing evidence may preponderate. Under this interpretation they need read only one side of the case. If they find sufficient evidence to justify the submission of the facts to a jury the administrative action is to be sustained and the record to the contrary is to be ignored. See *National Labor Relations Board* v. *Waterman Steamship Corporation*, 309 U. S. 206, 84 L. Ed. 704, 60 Sup. Ct. 493; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 84 L. Ed. 1226, 60 Sup. Ct. 918.

The administrative process provided by the Treasury Department similarly limited the scope of review by the Deputy Commissioner of the finding of the District Supervisor. The Deputy Commissioner determined merely that the findings of the District Supervisor were supported by substantial evidence (R. 339).

In other words, annulment of petitioner's permit was based upon the determination of the prosecuting officer, the District Supervisor, as to the existence of fraud, misrepre-

sentation, or concealment of material fact in the procurement of the permit. That his findings were regarded by the Alcohol Tax Unit as in effect the findings of the Secretary required by the Statute is further shown by the fact that only in his order (R. 303) are the findings incorporated. The Statute provides (Sec. 204(e)) that "the order shall state the findings which are the basis for the order."

Petitioner contends that delegation by the Secretary of his duty to hear, determine and annul upon such terms was improper. It was contrary to fundamental ideas of fairness and justice, and robbed the "hearing" to which petitioner was entitled of substantial fairness, although a hearing in form was provided.

Since the scope of judicial review was limited by the statute, it was the obligation of the Treasury Department in carrying out the mandate of Congress, to furnish permittees an opportunity for a fair and adequate administrative hearing. It was a requirement of such a hearing that a fair and adequate opportunity be afforded for review of the decisions of the officer in whom were united the prosecuting and adjudicating functions.

In this connection it may be noted that the District Supervisor directed the Hearing Officer to make "such findings of fact as are in such case required by Sections 3100 to 3124, Internal Revenue Code and Article XIII of Regulation 3 (1942)" (R. 164). The Section of the Internal Revenue Code referred to relates to industrial alcohol plants, a distinctly different subject-matter. Section 3114, Internal Revenue Code, deals with the issuance and revocation of permits to manufacturers of industrial alcohol and Section 3114(c) provides that in case of a revocation of a permit the manufacturer may "by appropriate procedure in a court of equity have the action of the Commissioner reviewed, and the court may affirm, modify or reverse the finding of

the Commissioner as the facts and law of the case may warrant * * *."

In other words, it appears that there was applied in the proceedings to annul petitioner's permit a procedure appropriate to a situation in which there was opportunity for unfettered judicial review of both law and fact.

The hearing procedure must accord with present basic ideas of fairness. In discussions of administrative procedure the criticism is increasingly voiced that there ought to be a clear separation in such procedure between the prosecuting function and the adjudicating function, or, in other words, that those persons whose task and interest it has been to build up and make out a case against an individual, or under whose supervision such a case has been built up, ought not to sit in judgment to determine whether on the law and the facts a case has actually been made out. Dickinson, "The Acheson Report: A Novel Approach to Administrative Law", 90 U. Pa. L. Rev., 757, 765; "Administrative Procedure in Government Agencies": Report of the Committee on Administrative Procedure (submitted to Attorney-General Robert H. Jackson, Jan. 22, 1941, and transmitted by him to the Senate, Jan. 24, 1941) 55-60. Hereinafter Cited Report. See also "Additional Views and Recommendations of Mr. Chief Justice Groner, Report, 250.

In this connection, the remarks made by Senator Wayne L. Morse, in connection with certain proposed War Manpower Commission legislation, are suggestive here. Senator Morse said, in part, as follows:

> "There is growing up in this country a trend toward * * * administration of law by the executive branch of Government through administrative officers who, in my judgment, do not have their opinions and views sufficiently checked by other branches of Government. I think it is a dangerous trend.

"It is proposed that the man whose regulations may be challenged by a citizen * * * shall be given the power to set up his own tribunal to judge whether or not he, in fact, has been unreasonable in the exercise of his duties under the act.

"I think it is a very bad principle of government * * * to give the power to pass upon * * * regulations to a tribunal appointed by the administrator himself.

"As a result of my experience with some of the appeal tribunals * * * I have no illusion with regard to them, and I should like to prevent the repetition of such a mistake in this particular bill.

"We know how they would work in practice. We know that in practice the chairman of the War Manpower Commission would, by and large, call the shots under the proposed act. * * * I believe (this) irrespective of who occupies the position. I intend no personal reference. The citizen should have protection from the arbitrary exercise of power * * *." 44 Cong. Rec. 1950 et seq. (March 8, 1945).

The limited review afforded by the process of appeal to the Deputy Commissioner does not satisfy the requirements. The weighing of all the competent and relevant evidence by the Deputy Commissioner was a necessary part of his function of adjudication. In *Saginaw Broadcasting Co.* v. *Federal Communications Commission,* 96 F. (2d) 554, Stephens, J. said (at page 559):

"In discussing the necessary content of findings of fact, it will be helpful to spell out the process which a Commission properly follows in reaching a decision. The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not,

as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion.

"The requirement that courts and administrative officers shall make findings of fact is far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law."

It has been repeatedly held that it is a fundamental requirement of a fair administrative hearing in an adversary proceeding that the material and competent evidence proffered by both sides be duly considered. *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, 64 L. Ed. 908, 40 Sup. Ct. 527; *National Labor Relations Board* v. *Union Pacific Stages,* 99 F. (2d) 153, 176; *National Labor Relations Board* v. *Thompson Products, Inc.,* 97 F. (2d) 13, 15; *National Labor Relations Board* v. *Sartoris & Co.,* 140 F. (2d) 203; *National Labor Relations Board* v. *Oneida Machine Tool & Die Co.,* 142 F. (2d) 163, 165; *Donnelly Garment Co.* v. *National Labor Relations Board,* (C. C. A. 8th, decided October 29, 1945, No. 12, 641).

It would be inappropriate to consider the adequacy of the evidentiary basis for the respondents' orders at this time and upon this record. It cannot be assumed that if the Deputy Commissioner in charge of the Alcohol Tax Unit had properly weighed and considered all of the competent and material evidence proffered by the petitioner and the Government, he would have made the same findings and order. *Donnelly Garment Co.* v. *National Labor Relations Board,* (C. C. A. 8th, decided October 29, 1945, No. 12, 641). The fact that the orders might be justified on the merits, even if true, would not obviate the requirement of a fair hearing, and recognition of this principle is essential in proceedings before administrative agencies. *Inland Steel Co.* v. *National Labor Relations Board,* 109 F. (2d) 9.

In view of the fact that annulment requires the finding of fraud and an order of annulment would destroy petitioner's established business, the Deputy Commissioner should be directed by this Court that such action should only be taken upon the clearest showing to him of fraud, concealment, or misrepresentation. The language of Judge Hutcheson, dissenting in *Atlanta Beer Distributing Co., Inc.* v. *Alexander, Federal Alcohol Administrator,* 93 F. (2d) 11, at 13, may well be considered in the instant case, as follows:

> "The result of the action of the Administrator, therefore, in, as appellant claims, arbitrarily refusing a permit is not to prevent applicant's entering into new business, but it is to take from it and destroy the established business and capital which it has already built up * * * I think that under the facts disclosed, the Administrator could not deny the permit except upon the clearest showing that one of the statutory grounds for refusing it existed."

This Court has recognized that there are situations in which administrative orders are required to meet a high standard of certainty. *North Carolina* v. *United States,* United States Supreme Court, 1944 Term, Nos. 560, 561, decided June 11, 1945, 89 L. Ed. 1287, 1290, 65 Sup. Ct. 1260; *Baumgartner* v. *United States,* 322 U. S. 665, 670, 88 L. Ed. 1525, 1529, 64 Sup. Ct. 1240. Petitioner submits that this case presents such a situation, in which the case made out by the Government must possess "that solidity of proof which leaves no troubling doubt."

II

Petitioner Was Entitled to Its Basic Permit as a Matter of Right

Before proceeding to a discussion of this contention petitioner wishes to call the Court's attention to the fact that the same contention was presented to the Court in the petition for certiorari filed in *Thomas J. Molloy Co., Inc.*, v. *Berkshire, et al.*, 143 F. (2d) 218, and that the Court denied certiorari in that case. 323 U. S. 802, 89 L. Ed. 478, 65 Sup. Ct. 559, rehearing denied 89 L. Ed. 689, 65 Sup. Ct. 711. However, petitioner respectfully requests this Court to re-examine its contention in the light of the argument now presented.

Section 204(a) of the Act sets forth in very clear and concise language the classes of persons entitled to permits thereunder. This section, supra, provides for two classes of such persons:—those who on May 25, 1935, held a basic permit as distiller, rectifier, wine producer or importer issued by an agency of the Federal Government (Sec. 204 (a)(1)); and—"Any other person," unless the Administrator finds such person fails to meet certain standards set forth in the act (Sec. 204(a)(2)).

Petitioner held on May 25, 1935, an Importer's Basic Permit issued by an agency of the Federal Government, and following the enactment of the Federal Alcohol Administration Act was duly re-issued its present Importer's Basic Permit under Section 204(a) of the Act.

The Government recognizes that one who held a basic permit on May 25, 1935, as a distiller, rectifier, wine producer or importer, issued by an agency of the Federal Government, was entitled as a matter of right to certain permits which were not subject to annulment under Section 204(e)(3) inasmuch as petitioner's Importer's Per-

mit was not included in the Order to Show Cause and no proceedings have been instituted to restrict in any manner petitioner's operations as an importer.

It is petitioner's contention that under the wording of Section 204(a) of the Act petitioner was entitled, as a matter of right upon application, to a basic permit as a wholesaler without further showing on its part. The mere possession of the Importer's Permit on May 25, 1935, and the filing of the application as required by the statute, compelled the Administrator to issue the Wholesaler's permit. It must follow that if petitioner was entitled to the Wholesaler's permit as a matter of right no question can arise as to whether such permit was issued through fraud, or misrepresentation, or concealment of material facts in the application.

A reading of the statute is sufficient to support the contention. Congress provided for two classes of persons to whom permits should be issued under the Act: first those who held permits by an agency of the Federal Government on May 25, 1935, and second, "All Other Persons." The language is clear and plain; no ambiguity exists and there is therefore no room for construction. *United States, et al.* v. *Missouri Pacific Railroad Company,* 278 U. S. 269, 73 L. Ed. 322, 49 Sup. Ct. 133; *Addison* v. *Holly Hill Fruit Products, Inc.,* 322 U. S. 607, 88 L. Ed. 428, 64 Sup. Ct. 1215. A primary rule of statutory construction is that the intent of the lawmaker is to be found in the language used. (*U. S.* v. *Goldenberg,* 168 U. S. 95, 42 L. Ed. 394, 18 Sup. Ct. 3). There is no need here to refer to the reports of Congress or discussions of lawmakers at the time of the enactment of the law for it is obvious that one cannot be "any person who, on May 25, 1935, held a basic permit," and at the same time be "any other person."

In discussing provisions of the Interstate Commerce Act, Mr. Justice Butler in *United States, et al.* v. *Missouri Pacific Railroad Company, supra,* stated at page 277:

> "• • • Where doubts exist and construction is permissible, reports of the Committee of Congress and statements by those in charge of the measure and other like extraneous matter may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed • • • (Citing cases.)"

Mr. Justice Frankfurter in discussing a regulation of the Administrator under the Fair Labor Standards Act which went beyond the intent of the statute said "• • • Nor is English speech so poor that words were not easily available to express the idea or at least to suggest it. After all, legislation when not expressed in technical terms is addressed to the common run of men and is, therefore, to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." (*Addison* v. *Holly Hill Fruit Products,* supra.)

If, however, resort is had to the reports of congressional committees as the court below did in the *Molloy* case, *supra,* petitioner submits that there is nothing therein inconsistent with its position. The report of the Committee on Ways and Means on H. R. 8870 of July 17, 1938, stated (at p. 8):

> "All persons who held a basic permit issued under the code system and in full force and effect at the time

of the termination of that system as a result of the decision in the Schechter case, are, under the bill, entitled as a matter of right to permits issued under the new law when enacted, except in the case of wholesalers (Sec. 4(a)(1)). Wholesalers held only temporary basic permits at the time of the termination of the code system. The temporary basic permits were issued without the usual investigation. The other permittees under the code system were issued permits after they demonstrated that they did not have records as law violators and that by reason of their previous experience, financial standing, and trade connections they were potential legal members of the industry (H. Rept. 1542, Federal Alcohol Control Bill, July 17, 1935, p. 8)."

When this statement is read in its entirety it supports, rather than negatives, petitioner's position for it provides for the issuance of permits as a matter of right to all persons who held permits under the Code system, except a certain class, namely wholesalers who held only temporary basic permits at the time of the termination of the Code system. This is the only logical construction that can be placed upon the language for the report continues to state that such wholesalers were issued basic permits without the usual investigation and that "other permittees" were issued permits after they had demonstrated their rights to such permit. What did the Committee mean by "other permittees"? Obviously permittees other than those who held "only temporary basic permits".

Indeed any contrary construction of the state would result in "absurd and impractical consequences." It would, as in this case, result in the situation of permitting one to engage in the import business, which includes selling at wholesale, but of denying him the right to engage generally in the wholesale business.

In drafting Section 204(a)(2), Congress provided that persons who desired to enter the liquor business thereafter

should be subjected to the exercise of administrative discretion by an administrative officer, within certain limits specified in that section. Congress realized that many persons had already made substantial investments in the liquor business, following the exercise of a similar administrative discretion after investigation by a Federal agency, and sought by the wording of Section 204(a)(1) to protect those persons against the possible destruction of their business through exposure to the exercise of a second administrative discretion by a different administrative officer.

It cannot logically be presumed that Congress intended to create the situation presented by the facts in this case, namely that a person should be permitted to engage in the business of an importer (and likewise a distiller, rectifier, or wine producer) and at the same time be denied the privilege of engaging in business as a wholesaler. Nor can it be presumed that Congress felt there were special circumstances surrounding the business of a wholesaler of intoxicating liquors, separate and distinct from those pertaining to the business of a distiller, rectifier, wine producer or importer, inasmuch as each of these classes of permittees are engaged in wholesaling the products which they distill, rectify, produce or import. It naturally follows, therefore, that all of the activities and privileges to which a wholesaler is entitled under the basic permit are included among the activities and privileges covered by permits to distillers, rectifiers, wine producers, and importers.

It is petitioner's contention, therefore, that the wording of Section 204(a) is clear and not subject to any ambiguity, and that the statute should be interpreted so as to be given its plain and clear meaning. *United States* v. *Goldenberg, supra; De Ruiz* v. *De Ruiz*, 88 F (2d) 752. Petitioner was, therefore, entitled to its Wholesaler's Basic Permit, which is the subject of the annulment order hereunder reviewed,

as a matter of right and such permit was not subject to annulment under Section 204(e)(3) of the Act.

Conclusion

It is respectfully submitted that the petition herein for a writ of certiorari to review the judgment and decree of the United States Circuit Court of Appeals for the Second Circuit should be granted, and that the said judgment and decree should be reviewed, and that the orders annulling petitioner's basic permit as a wholesaler should be set aside.

Respectfully submitted,

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Counsel for Petitioner.